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24201 7590 12/04/2008 FULWIDER PATTON LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE, TENTH FLOOR LOS ANGELES, CA 90045				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: NORMAL YAMAMOTO and ADAM G. BRATTER

Application No. 09/921,734
Technology Center 3700

Mailed: December 4, 2008

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 14, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated October 2, 2007. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. < While reference to page and line number of the specification ****>requires<** somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 2-4 of the Amended Supplemental Appeal Brief filed October 2, 2007, is deficient because it does not separately map the appealed independent claims 1, 5, 11,

15, 17, 19, 221, 22, 24, 29 and 30 to the specification. Correction is required.

Correction of the Summary of Claimed Subject Matter is required.

APPEAL BRIEF, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Supplemental Appeal Brief filed October 2, 2007, under the heading "Grounds of rejection to be reviewed on appeal" is unclear and/or is not consistent with the grounds of rejection of claims of record. The grounds of rejection of the claims as provided in the Appeal Brief must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified.

A review of the Final Rejection mailed July 14, 2004, includes the following rejections:

Claims 5, 15 and 19 are rejected under 35 USC 103(a) as being unpatentable over Yamamoto et al in view of Walters and further in view of Wilson, Wyant and Koba.

Claim 6 is rejected under under 35 USC 103(a) as being unpatentable over Yamamoto et al as modified by Walters, Wilson, Wyant, Koba and further in view of Brown et al.

Claims 12 and 14 are rejected under 35 USC 103(a) as being unpatentable over Yamamoto et al in view of Walters, and further in view of Wyant.

Claims 17, 27 and 27 are rejected under 35 USC 103(a) as being unpatentable over Yamamoto et al in view of Walters, and further in view of Wilson and Wyant

Claim 24 is rejected under 35 USC 103(a) as being unpatentable over Yamamoto et al in view of Walters and further in view of Koba.

Whereas Appellant(s) Appeal Brief, filed October 2, 2007, has either not indicated the grounds of rejection of these claims or has improperly listed these claims, as:

Claims 5, 15 and 19 are rejected under 35 USC 103(a) as being unpatentable over Yamamoto et al in view of Wilson, Wyant and Koba.

The Walters reference was excluded from the above rejection.

The rejection of Claim 6 under 35 USC 103(a) as being unpatentable over Yamamoto et al as modified by Walters, Wilson, Wyant, Koba and further in view of Brown et al was not identified at all.

Claims 12, 14, 17, 27 and 28 were rejected under 35 USC 103(a) as being unpatentable over Yamamoto et al in view of Walters, and further in view of Wyant.

However, note that the rejection of Claims 12 & 14 were not combined with the rejection of Claims 17, 27 and 28.

Correction of the Grounds of rejection to be reviewed on appeal for all claims is required.

APPEAL BRIEF, ARGUMENTS

A review of the file finds that the arguments with respect to each grounds of rejection as provided in the Supplemental Appeal Brief filed October 2, 1007, under the heading “Argument” have not been clearly provided. Each grounds of rejection must be treated under a separate heading in accordance with 37 CFR 41.37(c)(1)(vii). Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number.

Appellant has not provided the necessary headings and/or subheadings for arguments which correspond to each grounds of rejection. *See also Manual of Patent Examining Procedure* (MPEP) § 1205.02 (8th ed. Rev. 6, Sept 2007) for details.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Supplemental Appeal Brief filed October 2, 2007, defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellant to submit an Appeal Brief which corrects the Appeal Brief's Summary of Claimed Subject Matter, the Grounds of Rejection and the related Arguments under 37 CFR §41.37(c)(1)(v-vii);
- 3) for the Examiner to acknowledge and consider any corrected Appeal Brief; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/dpv

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